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EAST DISTRICT OF LA
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LORETTA G. WHYTE
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF NEW ORLEANS; CFI INDUSTRIES, INC.,
formerly doing business as Letellier Phillips Paper
Company; DELTA BY-PRODUCTS, INC.;
EDWARD LEVY METALS, INC,

Defendants.

Civil Action No.

02-3618

SECT. K MAG. 2

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. § 9601 et seq., for recovery of response costs incurred during the period from October 1, 1980 through December 31, 2001 by the United States in response to releases and threatened releases of

hazardous substances into the environment from the Agriculture Street Landfill Superfund Site ("Site"), located in the city of New Orleans, Orleans Parish, Louisiana pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607 and for civil penalties of up to \$27,500 per violation per day pursuant to Section 104(e)(5)(B) of CERCLA and Pub. L. No. 104-134, 61 Fed. Reg. 69,360 (1996) for Defendant City of New Orleans failure to comply with Section 104(e)(2) of CERCLA.

JURISDICTION AND VENUE

2. This Court has exclusive jurisdiction over the subject matter of this action under Sections 107 and 113(b) of CERCLA, 42 U.S.C. §§ 9607 and 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue properly lies in the Eastern District of Louisiana under Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. § 1391, because the Site is located in this district and these claims arise in connection with releases of hazardous substances that have occurred in this district.

DEFENDANTS

4. Defendant City of New Orleans ("City") is a Louisiana municipality.

5. Defendant CFI Industries, Inc. is a Delaware corporation with its principal place of business in Illinois. Defendant is the successor in interest to the liabilities of Letellier-Phillips Paper Company.

6. The Phillips Paper Stock Company was formed as a Louisiana corporation on or about September 21, 1908.

7. On or about November 23, 1912, The Phillips Paper Stock Company changed its name to Letellier-Phillips Paper Company. At relevant times, Letellier-Phillips Paper Company operated a facility in New Orleans, Louisiana.

8. On or about September 27, 1974, Letellier-Phillips Paper Company merged into Consolidated Fibres, Inc. Consolidated Fibres, Inc. succeeded to the liabilities of Letellier-Phillips Paper Company.

9. In or about 1993, Consolidated Fibres, Inc. changed its name to CFI Industries, Inc.

10. Defendant Delta By-Products, Inc. is a Louisiana corporation. At relevant times, Delta By-Products, Inc. operated a facility in New Orleans, Louisiana.

11. Defendant Edward Levy Metals, Inc. is a Louisiana corporation. At relevant times, Edward Levy Metals, Inc. operated a facility in New Orleans, Louisiana.

THE SITE

12. The Site consists of approximately 95 acres, which includes residential and commercial areas, a school, community center, playgrounds, and undeveloped property.

13. During the period from approximately 1909 through at least 1969, the City operated a dump and/or sanitary landfill at the Site. During that time period it also conducted activities at the Site related to surface grading. The Site was operated by the City as a dump/landfill for residential, commercial, and industrial waste. Beginning in 1948, or earlier, and continuing until at least 1958, Letellier-Phillips Paper Company conducted salvage operations on a portion of the Site. Beginning in 1948, or earlier, and continuing until at least

1969, Defendant Delta By-Products, Inc. conducted salvage operations on a portion of the Site.

EPA'S ACTIONS AT THE SITE

14. In May 1986, EPA conducted a Site Inspection, and in September 1993, EPA completed an Expanded Site Inspection at the Site.

15. In 1994, EPA identified arsenic, lead, and polynuclear aromatic hydrocarbons ("PAHs") among other hazardous substances as contaminants of potential concern at the Site.

16. In March 1994, in a time-critical removal action, EPA installed a fence around the entire undeveloped portion of the Site, consisting of approximately 48 acres.

17. On December 16, 1994, the Site was added to the National Priorities List ("NPL") of uncontrolled hazardous substance releases, 40 C.F.R. Part 300, Appendix B, which was promulgated pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a).

18. For purposes of investigation and response action, EPA divided the Site into five (5) operable units: Operable Unit 1 is 48 acres of undeveloped property; Operable Unit 2 includes residential developments; Operable Unit 3 includes the Shirley Jefferson Community Center and associated playground; Operable Unit 4 is the Moton Elementary School, Magrauer Playground and recreation center; and Operable Unit 5 is the groundwater.

19. On September 2, 1997, EPA issued an Action Memorandum for Operable Units 1-3 and a Record of Decision for Operable Units 4-5 at the Site. The Action Memorandum provided for a non-time-critical removal action at Operable Units 1-3. The Record of Decision provided for no action to be taken at Operable Units 4-5.

20. On October 19, 1998, EPA response crews began the non-time-critical removal action on Operable Units 1-3 at the Site.

21. On October 12, 2001, after completing the removal action on Operable Units 1-3 at the Site, EPA issued its Proposed Plan of Action to not conduct further action on Operable Units 1, 2 and 3.

22. On April 4, 2002, EPA issued its No Action Record of Decision, which concludes that no further action is necessary because previous responses have eliminated the need for further action.

GENERAL ALLEGATIONS

23. Each Defendant is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

24. The Site is contaminated with hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and set forth at 40 C.F.R. § 302.4.

25. Hazardous substances located in the surface and subsurface soil at the Site, include, but are not limited to, lead, arsenic, and PAHs.

26. There have been releases or threatened releases, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous substances into the environment at or from the Site.

27. The Site, including but not limited to the buildings, structures, installations, equipment, pipelines, wells, pits, ponds, lagoons, impoundments, ditches, landfills, storage containers, motor vehicles, and rolling stock, associated with the salvage or dump/landfill

operations, is a "facility" as defined in Section 101(9)(B) of CERCLA, 42 U.S.C. § 9601(9)(B).

28. EPA conducted investigations and removal actions at the Site to address risks to human health and the environment from the release of hazardous substances.

29. In the course of undertaking response actions regarding the release or threat of release of hazardous substances at the Site, the United States has incurred unreimbursed response costs, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), in excess of \$42,000,000, as of December 31, 2001.

30. The response action taken and the response costs incurred by the United States at the Site are not inconsistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300.

31. The United States will continue to incur response costs, including enforcement costs, for actions taken in response to the release or threatened release of hazardous substances from the Site.

SPECIFIC ALLEGATIONS OF LIABILITY

32. Defendant City is liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1) because it was the owner of a portion of the Site at a time when hazardous substances were disposed of at the Site, and it continues to own a portion of the Site. Defendant City is liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1) because it was the operator of the dump/landfill at the Site at a time when hazardous substances were disposed of at the Site. Defendant City by contract, agreement or otherwise arranged for disposal or treatment of hazardous substances at the Site or arranged for the transport for disposal or treatment of hazardous substances at the Site within the meaning of

Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3), and it selected the Site for the disposal of hazardous substances and transported hazardous substances for disposal to the Site within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

33. Defendant CFI Industries, Inc. is liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1) because it is the successor in interest to Letellier-Phillips Paper Company, the owner and operator of a portion of the Site at a time when hazardous substances were disposed of at the Site. Defendant CFI Industries, Inc. also is liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3) as the successor in interest to Letellier-Phillips Paper Company, a person that by contract, agreement or otherwise arranged for disposal or treatment of hazardous substances at the Site or arranged for the transport for disposal or treatment of hazardous substances at the Site.

34. Defendant Delta By-Products, Inc. is liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1) because it was the owner of a portion of the Site at a time when hazardous substances were disposed of at the Site, and it continues to own a portion of the Site. Defendant Delta By-Products, Inc. is liable under Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1) because it was the operator of a portion of the Site at a time when hazardous substances were disposed of at the Site.

35. Defendant Edward Levy Metals, Inc. by contract, agreement or otherwise arranged for disposal or treatment of hazardous substances at the Site or arranged for the transport for disposal or treatment of hazardous substances at the Site within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

STATUTORY AUTHORITY

36. Section 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e)(2), provides, in pertinent part:

Any officer, employee, or representative [of the President, duly designated by the President,] . . . may require any person who has or may have information relevant to any of the following to furnish, upon reasonable notice, information or documents relating to such matter:

(A) The identification, nature, and quantity of materials which have been or are generated, treated, stored, or disposed of at a vessel or facility or transported to a vessel or facility.

(B) The nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from a vessel or facility.

37. Section 104(e)(5)(B)(ii) of CERCLA, 42 U.S.C. § 9604(e)(5)(B)(ii), further provides that

The President may ask the Attorney General to commence a civil action to compel compliance with a request

...

The court may assess a civil penalty... for each day of noncompliance against any person who unreasonably fails to comply with the provisions of paragraphs (2)

38. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides in pertinent part:

Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section -

- (1) the owner and operator of a vessel or a facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such hazardous substances, and
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for -

- (A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;
- (B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;
- (C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and
- (D) the costs of any health assessment or health effects study carried out under section 9604(i) of this title.

The amounts recoverable in an action under this section shall include interest on the amounts recoverable under subparagraphs (A) through (D). Such interest shall accrue from the later of (i) the date payment of a specified amount is demanded in writing, or (ii) the date of the expenditure concerned.

FIRST CLAIM FOR RELIEF AGAINST DEFENDANTS

39. The allegations contained in Paragraphs 1 through 35 and 38 are realleged and incorporated herein by reference.

40. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants are liable to the United States for all unreimbursed response costs incurred and to be incurred by the United States with respect to the Site, including but not limited to costs of investigation, removal action, oversight, and enforcement activities.

41. Pursuant to Section 113(g) of CERCLA, 42 U.S.C. § 9613(g), the Court should enter a declaratory judgement that Defendants are liable, jointly and severally, for future response costs incurred by the United States at the Site.

42. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants also are liable for prejudgment interest on the United States' response costs commencing on the later of the date such costs were demanded or the date such costs were incurred.

SECOND CLAIM FOR RELIEF AGAINST DEFENDANT CITY

43. The allegations contained in Paragraphs 1 through 4, 12-32, and 37-38 are realleged and incorporated herein by reference.

44. On November 28, 2000, the United States, acting through Myron O. Knudson, a duly authorized representative employed by EPA as the Director of the Superfund Division of EPA's Region VI, sent to Defendant, Marc Morial, Mayor of New Orleans, a Request for Information (the "Information Request"), pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). This Information Request sought a "complete and truthful response" within thirty (30) days of receipt of the Information Request. (See attached Exhibit A.)

45. The Information Request sought information relating to one or more of the categories of information set forth in Subsections 104(e)(2) of CERCLA, 42 U.S.C. § 9604(e)(2), including information regarding the generation, storage and release of hazardous

substances at the Site, operations conducted at the Site, and additional information related to the United States' pursuit of a cost recovery action or other CERCLA enforcement action in connection with the Site.

46. On December 19, 2000, Defendant City requested EPA to extend the deadline for the City's response to the Information Request so that the response would be due on January 28, 2001.

47. By letter dated May 10, 2001, EPA informed Defendant City that its response to the Information Request was inadequate and requested the City to provide alternate information sources to compensate for the City's failure to provide information about the Agriculture Street dump.

48. On numerous other occasions, EPA, through its representatives, requested the City to provide information from sources within the control of the City that pertained to information requested in the Information Request, and the City did not provide the requested information.

49. Defendant City never provided the specific information about the dump that was requested by EPA, including but not limited to the following types of information: dates of operation, copies of leases and agreements, the identity of transporters, a description of the dump operations, lists of industrial and commercial facilities located in the vicinity from which waste was accepted, the physical characteristics of the dump, and information about insurance policies, and it never provided names and locations of other City waste facilities that existed during the 1909-1968 time period.

50. Defendant City never provided a full and complete response to the Information Request.

51. Defendant City unreasonably failed to comply with the Information Request.

52. Pursuant to Section 104(e)(5)(B) of CERCLA and Pub. L. No. 104-134, 61 Fed. Reg. 69,360 (1996), Defendant is liable to the United States for a civil penalty in an amount not to exceed \$27,500 per day for each day on and after January 28, 2001, that Defendant failed and continues to fail to comply with Section 104(e)(2) of CERCLA.

THIRD CLAIM FOR RELIEF AGAINST DEFENDANT CITY

53. The allegations contained in Paragraphs 1-4 are realleged and incorporated herein by reference.

54. In 1999, the United States filed an action in this Court entitled United States v. City of New Orleans, Civil Action No. 99-0756, for injunctive relief and a civil penalty against the Defendant City because said Defendant refused to provide access to the Site. The United States prevailed in its request for injunctive relief in that action.

55. The Complaint and the judicial decisions from that case, which is a collateral proceeding, pursuant to LR 3.1, are realleged and incorporated herein by reference.

56. Pursuant to Subsection 104(e)(5)(B) of CERCLA, 42 U.S.C. § 9604(e)(5)(B), Pub. L. No. 104-134, 61 Fed. Reg. 69,360 (1996), Defendant City is liable to the United States for a civil penalty in an amount not to exceed \$27,500 per day for each day from March 8, 1999, when Defendant City failed to provide access to EPA, as requested by an Administrative Order issued by EPA, until April 1, 1999, when the Court ordered the City to provide access.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests this

Court to:

(a) Enter judgment in favor of the United States and against each Defendant, jointly and severally, for reimbursement of all costs incurred and paid by the United States in responding to releases or threatened releases of hazardous substances at the Site, including all enforcement costs relating to this action and all applicable pre-judgment interest;

(b) Enter a declaratory judgment of joint and several liability against each Defendant and in favor of the United States that will be binding in future actions to recover further response costs related to the Site;

(c) Award the United States its enforcement costs, and disbursements in this action;

(d) Award the United States a civil penalty of up to \$27,500/day for each day after January 28, 2001 that the Defendant City unreasonably failed to comply with the Information Request, and for each day that Defendant City continues to unreasonably fail to comply with the Information Request.

(e) Award the United States a civil penalty in the amount of \$27,500/day for each day from March 8, 1999 until the Court ordered the City to provide access on April 1, 1999; and

(f) Grant such other further relief as the Court may deem just and proper.

Respectfully submitted,

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